



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **200450044**

Release Date: 12/10/04

SIN – 501.03-30

Date: September 14, 2004

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

X =

Entity 1 =

Entity 2 =

Entity 4 =

Entity 5 =

A =

B =

C =

D =

M =

d =

e =

y =

Dear _____ :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information submitted indicates that you were incorporated on d under the General Corporation Law of M. Article IV of your Certificate of Incorporation states the following:

"Said corporation is organized exclusively for charitable, religious, education, and/or scientific purposes, including for such purposes, the distribution to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954..."

You are one of the five related corporations formed by X. Simultaneously formed with you on d by X were Entity 2, Entity 4 and Entity 5. The submissions refer to them as A, C and D, respectively. You are referred to as B. Four years earlier, X had formed Entity 1.

A and D have each filed an application for recognition of exemption under section 501(c)(3) of the Code. C filed an application for recognition of exemption under section 501(c)(25) of the Code. Entity 1 is currently exempt under section 501(c)(3).

X is the sole officer holding the position of president of the five corporations (the Related Corporations). You indicated that the recent formation of the four corporations is the expansion of the work for the public good into a cooperative arrangement between all five corporations.

You indicated that in year _____, X gave y dollars to Entity 1 with the intention that it be used as a loan, be invested in a program of high interest return, the interest earned be kept by Entity 1, and the principal be returned to X. However, the person who had control of the fund embezzled the fund. Entity 1 has written off the amount in its books and treated it as a "donation" by X to allow him to deduct the amount on his personal income tax return.

You state the following information relating to the Related Organizations---

"We would like to use A as our 501(c)(3) Charitable Foundation to accept large donations, invest them and distribute specific amounts to B, a non-operating 501(c)(3) foundation, after B has solicited, received, reviewed and approved grant applications that fit the vision and mission of our system.

B will function as our non-operating 501(c)(3) pass-through organization. Grant and service proposals will be directed to this organization from other operating 501(c)(3) non-

profit organizations. B will thus handle the year to year distribution of funds as requested and received from A.

D and Entity1 will be two of the many operating 501(c)(3) non-profit organizations that will be eligible to receive grants from B.

C will function as section 501(c)(25)(A) through (G) holding corporation for real assets that can be best purchased by C and then leased to other 501(c)(3) non-profit organizations within the system. This will maximize the use of assets that can be time-shared by grantees, instead of being purchased and then only be used part-time. It will also simplify the change over from one non-profit to the next, if a grantee decides to "close its doors".

Our vision and mission is to provide the following:

1. Workshops and training that teach how to be successful at obtaining B grants, matching funds and/or sponsorships.
2. Workshops that teach how to share one's wealth that is above and beyond immediate needs in a way that benefits others and still protect the future needs of the philanthropist.
3. Workshops and training that teach how to improve one's spiritual, mental, physical, and emotional approaches to life.
4. Workshops on personal, business and relationship development.
5. Workshops on developing talents in any of the fine arts.

The financial data submitted in your application shows "zero" income and expenses for tax years and . When we requested for your budget for tax years and , you responded "None are projected at this point in time. We are awaiting approval of non-profit status so as to be able to advertise the agency purpose and then solicit funds as tax deductible." Also, in a same date letter pertaining to the Related Organizations as a group it was stated "We are still in the process of organizing our structure, so we have had no income to date."

In your letter dated e, you stated that your activity "will be limited to administering the grant program of A..." To be eligible for grants, individuals and groups must show abilities to perform one or more categories (with more points given for higher order numbers) that include donating a portion or entire owned business, funds, or service, to the A System. You also state that grantees' use of grants will be limited to "developing programs that avoid duplication as spelled out in the vision and mission of A."

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, scientific, educational and other purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order for an

organization to be exempt under section 501(c)(3) of the Code it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations provides the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged. The term "charitable" has been interpreted to include the promotion of health.

Rev. Proc. 90-27, 1990-1 C.B. 514 sets forth procedures with regards to applications for recognition of exemption. An organization must establish that it meets the particular requirements of the section under which exemption is claimed.

Section 5.02 provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirement of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination, which administrative appeal or protest rights will be afforded.

Generally, courts have also concluded that an applicant bears the burden of establishing that it meets the requirements for recognition of exempt status. In numerous cases, courts have upheld Service rulings denying recognition where an applicant failed to establish its exempt purpose or that it did not have substantial non-exempt purposes. See, e.g., *La Verdad v. Commissioner*, 82 T.C. 215 (1984) (lack of "concrete information" about future operations); *General Conference of the Free Church of America v. Commissioner*, 71 T.C. 920 (1979) ("incomplete" and "ambiguous" responses to questions posed by IRS); *Levy Family Tribe Foundation v. Commissioner*, 69 T.C. 615, 619 (1978) ("[R]ecords replete with unsupported generalizations [that are] too general and lack the facts necessary to establish public, rather than personal, purposes..."); *Church In Boston v. Commissioner*, 71 T.C. 102, 106-07 (1978) ("Documented criteria which would demonstrate the [grant] selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant"); *American Science Foundation v. Commissioner*, T.C. Memo. 1986-556 (grant selection criteria and procedures); *Pius XII Academy, Inc. v. Commissioner*, T.C. Memo. 1982-97 (vague generalizations about

proposed school operations); *see also Basic Bible Church of America v. Commissioner*, T.C. Memo. 1983-287 (failure to submit books and records for examination supports inference that activities were not in furtherance of exempt purposes).

Our analysis indicates that you have been formed for more than 2 years and have yet to operate. You also have no budget for operation in the next two years. When you become operational your sole activity is administering the grant program of a related entity. We find the grant program is vague in the purpose it will accomplish with the limitation imposed on grantees' use of grants for "developing programs that avoid duplication as spelled out in the vision and mission of A." Moreover, the eligibility criteria of requiring a grantee to donate assets and service to the Related Organizations are inconsistent with purposes under section 501(c)(3).

Pursuant to section 5.02 of Rev. Proc. 90-27, your failure to demonstrate that your proposed activities will be exempt will require that establish a record of actual operations before a ruling or determination will be issued. Therefore, we cannot rule that you are exempt under section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

In the event this ruling becomes final, it will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you decide to protest this ruling, your protest statement should be sent to the address shown below. If it is convenient, you may fax your reply using the fax number shown in the heading of this letter.

Internal Revenue Service
TEGE, SE:T:EO:RA:T:3

1111 Constitution Ave, NW
Washington, D.C. 20224

If you do not intend to protest this ruling, and if you agree with our proposed deletions as shown in the letter attached to Notice 437, you do not need to take any further action.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Ronald J. Shoemaker

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437